APPENDIX

SUPREME COURT OF CONNECTICUT

No. 12395 State of Conn. v. Jack Roach 2/28/69

February 26, 1969 The application of the defendant for certification by the Chief Justice, under § 52-265a of the General Statutes of a purported appeal to the Supreme Court from (1) the granting of a temporary injunction by a judge of the Superior Court, and (2) the denial of the motion of the defendant, made immediately after the issuance of a temporary injunction that it be made permanent, is denied.

King, Chief Justice

MOTION TO DISMISS

PREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 10 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1387

JACK L. ROACH

Petitioner,

— v. —

STATE OF CONNECTICUT,

Respondent.

MOTION OF RESPONDENT TO DISMISS

ROBERT K. KILLIAN
Attorney General
State of Connecticut
30 Trinity Street
Hartford, Connecticut

Attorney for Respondent

INDEX

	Page
Motion to Dismiss	1
Brief in Support of Motion	1
Conclusion	7
APPENDIX — Respondent's Motion to Dismiss	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. _____

JACK L. ROACH,

Petitioner,

— v. —

STATE OF CONNECTICUT,

Respondent.

MOTION OF RESPONDENT TO DISMISS

I.

The respondent State of Connecticut respectfully moves to dismiss the above appeal on the ground that there has been no final judgment or decree in this case by the supreme court of Connecticut.

II.

BRIEF IN SUPPORT OF MOTION

Page 1 of the petition for certiorari addressed to this Court states that "the jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3)."

The first sentence of section 1257 states that "*Final judgments or decrees* rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . ." (Underlining respondent's own).

It is submitted that no "final judgment or decree" has yet been rendered by the supreme court of Connecticut.

The procedural background outlined in the Petition for a Writ of Certiorari presents a mere skeletal view of the action in the Connecticut Courts. What in fact transpired was a procedurally commonplace type of litigation, i.e., a civil complaint alleging a pattern of misconduct leading to irreparable injury with a prayer for a temporary and permanent injunction. The action was initiated on January 30, 1969 and hearing was held under a show cause order on February 4-5, with a temporary injunction issuing on the latter date.

The next step of petitioner herein was to appeal to the supreme court of Connecticut pursuant to Connecticut General Statutes Sec. 52-265a. The precise wording of this statute is revealing:

> "DIRECT APPEAL ON QUESTIONS INVOLVING THE PUBLIC INTEREST. Notwithstanding the provisions of section 52-264 and 52-265, any party to an action who is aggrieved by an order or decision of the superior court or the court of common pleas, which action involves a matter of substantial public interest and in which delay may work a substantial injustice, may appeal under this section from such order or decision, stating therein the question of law on which the appeal is based, to the supreme court within two weeks from the date of the issuance of such order or decision. The chief justice shall, within one week of receipt of the appeal, rule whether the issue involves a substantial public interest and whether delay may work a substantial injustice. Upon certification by the chief justice that a substantial public interest is involved and that delay may work such an injustice, the trial judge shall forthwith transmit a certificate of his decision, together

with a proper finding of fact, to the chief justice, who shall thereupon call a special session of the supreme court for the purpose of an immediate hearing upon the appeal. The chief justice may make orders to expedite such appeals, including orders specifying the manner in which the record on appeal may be prepared."

It is noted that petitioner failed to include the wording of this statute in his petition for certiorari. The reason for this apparent oversight is obvious. Even a cursory review of the Connecticut statute demonstrates that its purpose is to provide expedited procedure for causes which, in the opinion of the chief justice of the supreme court of Connecticut, involve matters of "substantial public interest" and in which delay may work "a substantial injustice." Petitioner sought by his purported appeal to convince the chief justice that his was such a cause. In this he was unsuccessful, and is thus relegated to the normal appeal provisions provided for in Chapter 902 of the Connecticut General Statutes, in particular Section 52-263 thereof which provides:

"APPEALS FROM SUPERIOR AND COMMON PLEAS COURTS. Upon the trial of all matters of fact in any cause or action in the superior court or the court of common pleas, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if either party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, he may appeal from the final judgment of the court or of such judge, or he may appeal from the decision of the court granting a motion to set aside a verdict, to the supreme court."

At no time did the chief justice or the supreme court of Connecticut have an opportunity to adjudicate the substan-

tive issues of petitioners cause. The only question before the chief justice was whether the matter was of sufficient moment to warrant invoking the expedited procedures of Sec. 52-265a. The chief justice having decided this in the negative, the petitioner was placed in the same position as any other appellant from a decision of the Connecticut superior court. He had and has available to him the tested procedures provided by the Connecticut statutes which insure a thorough and orderly review of the lower court's determination.

Section 52-265a was adopted by the 1967 Session of the Connecticut General Assembly. It was the intent of the legislation that this remedy would be invoked infrequently, and then only in cases of clear and pursuasive public interest. Indeed, the very efficacy of the statute depends in large measure on restrained judgments by the chief justice. Were he to permit ready use of its procedures, the very expeditiousness of its design would be threatened by an increasing number of these privileged matters. Petitioner's position in this case would force just such a situation. Consider the dilemma faced by the chief justice if an appeal to the United States Supreme Court were permitted from the exercise of his discretion as provided in Section 52-265a. In the future disappointed litigants in the superior court could ignore the normal appeal procedures and invoke Section 52-265a. The chief justice would then have to grant the request or have the matter be the subject of an appeal to the United States Supreme Court. In effect, the chief justice would have to accede to these appellants or forego appellate review by the Connecticut court. Certainly it was never the intent of the legislature to create such an impossible situation. And with equal certainty then, neither the legislature nor the chief justice intended that his denial of expedited procedures would constitute a substantive disposition by the supreme court, i.e., would be a final decision or decree.

It should be emphasized that the respondent has no wish to foreclose consideration of any of the substantive issues raised by the petitioner. However, this review should be first by the Connecticut supreme court. In order to assure an orderly progression through the appeal procedures in Connecticut, respondent has already filed with the supreme court of Connecticut an appropriate motion to have the petitioner file an assignment of errors so that the essential and mandatory record may be developed to aid that court in its deliberations. See appendix. Until such filings are made, further consideration by any appellate tribunal is premature.

It is submitted that this aproach is not only sound, but essential to the orderly administration of justice in a federal system. As Mr. Chief Justice Vinson has pointed out regarding the role of the United States Supreme Court:

> "Congress has limited our power to review judgments from state courts lest the Court's jurisdiction be exercised in piecemeal proceedings to render advisory opinions. Were our reviewing power not limited to 'final' judgments, litigants would be be free to come here and seek a decision on federal questions which, after later proceedings, might subsequently prove to be unnecessary and irrelevant to a complete disposition of the litigation." *Pope* v. *Atlantic Coast Line R. Co.*, 345 U.S. 381, 382 (1952).

These words have relevance to the instant proceeding. Petitioner has a clear route to follow to secure an appropriate judicial review of his allegations. The process is elemental. The proper method for raising these questions is, ". . . by appeal, after a hearing on the merits and final judgment. . . .". *NAACP U. Alabama*, 357 U.S. 449, 467 (1957). It is only after satisfying these requirements that the jurisdiction of the United States Supreme Court may be invoked. *Construc-*

tion Laborers v. *Curry,* 371 U.S. 542, 548-551 (1962); *Pope* v. *Atlantic Coast Line R. Co.* supra; *Richfield Oil Corp.* v. *State Board,* 329 U.S. 69, 72-74 (1946). In pursuing his petition for certiorari the petitioner in effect asks the United States Supreme Court to preclude consideration of the matter by the appellate tribunal in Connecticut. Respondent's instant motion to prevent such a tactic is more than a mere technical objection. It is rather a matter of fundamental relationships within the federal system. In fact, this precise point was recognized by the United States Supreme Court in the case of *Building Union* v. *Ledbetter Co.,* 344 U.S. 178, 180 (1952):

> "The provision of § 1257 that only 'Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . .' has been carried in almost identical language since the Judiciary Act of 1789, 1 *Stat.* 85, § 25.
>
> 'This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system.' *Radio Station WOW* v. *Johnson,* 326 U.S. 120, 124."

As a final point it should be noted that the only decree in this case is for a temporary injunction, which is not considered a final judgment or decree appealable to the Connecticut supreme court.

Olcott v. *Pendleton,* 128 Conn. 292, 22 A. 2d 633 (1941). In fact, petitioner has not even filed an answer in the superior court.

For the above reasons respondent has taken no position on the substantive allegations of the petition for certiorari. However, the observation is inescapable that the cause of constitutional rights in the long run is better served by stout

defense of the law rather than by slights of libertarian rhetoric. As Mr. Justice Frankfurter wisely commented, "The history of American freedom is, in no small measure, the history of procedure." *Malinski* v. *New York*, 324 U.S. 401, 414 (1944).

CONCLUSION

For the foregoing reasons, the respondent claims there has been no final judgment or decree by the Supreme Court of Connecticut and hence jurisdiction has not been established pursuant to 28 U.S.C. 1257 (3). Therefore, respondent requests that its Motion to Dismiss be granted.

ROBERT K. KILLIAN
Attorney General
State of Connecticut
30 Trinity Street
Hartford, Connecticut

Attorney for Respondent

APPENDIX

No. 12395
STATE OF CONNECTICUT
v.
JACK L. ROACH

SUPREME COURT
STATE OF CONNECTICUT
MAY 26, 1969

MOTION TO DISMISS FOR FAILURE TO FILE ASSIGNMENT OF ERRORS

1. On February 5, 1969, the Superior Court for Tolland County, Judge Barber, issued a temporary injunction against defendant Jack Roach.

2. On February 19, 1969, the defendant purportedly appealed to the Supreme Court of Connecticut pursuant to Section 52-265a of the General Statutes revised to date, alleging *inter alia* that his cause involved a substantial public interest and that delay would work a substantial injustice.

3. On February 27, 1969, Chief Justice King denied said "purported appeal" pursuant to said Section 52-265a.

4. Since that date the defendant has taken no further steps to perfect his appeal pursuant to Chapter 902 of the General Statutes, revised to date.

Wherefore, the Plaintiff moves that the Court dismiss said appeal for failure to file an Assignment of Errors.

Plaintiff, State of Connecticut

ROBERT K. KILLIAN
Attorney General

JOHN G. HILL, JR. (s)
by John G. Hill, Jr.
Asst. Attorney General